IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 32385 of 2006(E)

AGAINST THE ORDER IN EP.127/05 IN
OS.174/2000 of MUNSIFF COURT, NORTH PARAVUR
.....

PETITIONER/ADDL. 5TH JUDGMENT DEBTOR:

SHYAM, S/O. V.R. SAROJINI DEVI,
SAROJA SADANAM, KOTTUVALLY, KAITHARAM P.O.

BY ADV. SRI.MATHEW SKARIA
SRI.JOSE THOMAS (PEEDIKAYIL)

RESPONDENTS/DECREE HOLDER & ADDL. JUDGMENT DEBTORS 4 AND 6 TO 9 & ANOTHER:
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1. **KOTTUVALLY NSS KARAYOGAM, NO.1034, KOTTUVALLY KARA, KOTTUVALLY VILLAGE, REPRESENTED BY ITS PRESIDENT, V.GOPINATHAN PILLAI, AJITHABHAVAN, -DO- -DO-.**

2. **JAGATHEESH, S/O.V.R.SAROJINI DEVI, SREERANGAM, PALLARIMANGALAM, MAVELIKKARA.**

3. **SHYLA SAIRAM, D/O.V.R.SAROJINI DEVI, ROOM NO.202, SREE SUSHANT, V.H.S. KOPER ROAD, DOMBIVILLI, NEAR KIDLAND ENGLISH SCHOOL, MUMBAI, MAHARASHTRA.**

4. **GIRIJA UNNIKRISHNAN, GIRIJA BHAVAN, ELOOR SOUTH, UDYOGAMANDAL.**

5. **MINI SASIDHARAN NAIR, KULANGARA HOUSE (SAKETHAM), KUNNUMPURAM, EDAPPALLY NORTH.**

6. PADMAJA RAMACHANDRAN,
ANASWARA, POOPATHI P.O., POYYA, MALA.

7. KEERTHANA, D/O. LATE V.S.SURESH,
KARTHIK, KOCHAMBALAM JUNCTION (NEAR),
KAITHARAM P.O., MINOR, REPRESENTED BY HER GUARDIAN
GOPINATHA PILLAI, KAMALALAYAM, KOTTUVALLY.

R1 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN
R4 & R5 BY SRI.VARGHESE PREM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **PHOTOCOPY OF THE JUDGMENT DATED 22/9/00 IN O.S.174/00 OF THE MUNSIFF'S COURT, N. PARAVUR.**

EXT.P2 **PHOTOCOPY OF E.P.127/05 IN O.S.174/00 OF THE MUNSIFF'S COURT, N. PARAVUR.**

EXT.P3 **PHOTOCOPY OF JUDGMENT DATED 17.12.04 IN OS 276/01 OF MUNSIFF'S COURT, N. PARAVUR.**

EXT.P4 **PHOTOCOPY OF THE PRELIMINARY DECREE DATED 17.12.04 IN O.S. 276/01 OF THE MUNSIFF'S COURT, N. PARAVUR.**

EXT.P5 **PHOTOCOPY OF THE OBJECTIONS SUBMITTED BY THE PETITIONER IN E.P.127/05 IN O.S.174/00 OF THE MUNSIFF'S COURT, N. PARAVUR.**

EXT.P6 **PHOTOCOPY OF THE OBJECTIONS SUBMITTED BY THE PETITIONER TO THE RULE 66 NOTICE IN EP 127/05 IN OS 174/00.**

EXT.P7 **PHOTOCOPY OF E.A. IN EP 127/05 IN OS 174/00 FILED BY THE PETITIONER.**

EXT.P8 **PHOTOCOPY OF THE SETTLED PROCLAMATION IN EP 127/05 IN OS 174/00 OF THE MUNSIFF'S COURT, N. PARAVUR.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 32385 OF 2006

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Dated this the 29th day of October, 2007.

J U D G M E N T

This writ petition is filed to declare that the decree in O.S.174/00 of Munsiff Court, North Paravur cannot be executed against the property scheduled in Ext.P8 sale proclamation and that the decree can be executed against the share of the property alloted to the 7th respondent as the legal heir of the first and 2nd defendants. I am informed that the present writ petitioner is one of the legal representatives of the deceased judgment debtors and further that it is his wife who has bid the property in Court auction and that the amount has been deposited and the sale has been confirmed. So, virtually now attempting to pass any order in this case will go against the confirmation of sale passed by the Court below. The appropriate remedy for the party was to file applications under Order 21 Rule 89 or Order 21 Rule 90 CPC as the case may be, and at this distance of time the present contention cannot be taken up. I am informed that a

partition final decree matter is pending before the Court and if the law permits the writ petitioner may raise contentions therein and it cannot affect the share of the auction purchaser.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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